



BRYAN CAVE LEIGHTON PAISNER LLP
One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, MO 63102-2750
T: 314 259 2000 F: 314 259 2020 bclplaw.com

US EPA RECORDS CENTER REGION 5



531510

May 8, 2018

Steven J. Poplawski
Direct: 314/259-2610
Fax: 314/259-2020
sjpoplawski@bryancave.com

Mr. Thomas Turner
U.S. EPA. Region 5
77 West Jackson Boulevard
Mail Code: C-14J
Chicago, IL 60604-3507

Re: Old American Zinc Plant ("OAZ") Superfund Site
Village of Fairmont City, IL (St. Clair County)

Dear Mr. Turner:

Enclosed please find an executed original signature for the access agreement to the above property.

Sincerely,



Steven J. Poplawski

SJP:kmb



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 02 2010

By Electronic Mail Only

REPLY TO THE ATTENTION OF:

XTRA Intermodal, Inc.
c/o: Steven J. Poplawski, Esq.
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102-2750

C-14J

Re: Cover Letter/Access Agreement for EPA Request for Access to XTRA property (Property) at Old American Zinc Plant Superfund Site ("OAZ Site"), N. 45th Street and Maryland Avenue, Village of Fairmont City, St. Clair County, IL

Dear Mr. Poplawski:

Pursuant to our prior discussions, this cover letter accompanies and will be placed in the EPA OAZ Site file with the attached signed OAZ Site access agreement (collectively, the "Agreement").

Herein, EPA agrees to the following positions regarding the interests of Site owner-PRP XTRA Intermodal, Inc. (XTRA):

- 1) EPA agrees that, upon XTRA's signature and return of the attached agreement, EPA will request the U.S. Department of Justice (DOJ) to immediately re-start formal negotiations with XTRA, and the federal General Services Administration, and any other parties identified as PRPs by EPA on a global CERCLA settlement of liability and payment obligations of all remaining and future response costs associated with the OAZ Site;
- 2) EPA agrees that it will only take the necessary actions required to complete the Work and attempt to minimize any other disruption to the Property. EPA will cooperate with the reasonable requests of XTRA that do not conflict with EPA's ability to accomplish the Work. Upon completion of the Work, EPA will promptly restore any portion of the Property disturbed by EPA in performance of the Work (other than the portion of the Property where soils

are to be placed as part of the Work) to the Property's condition as of the date immediately prior to the disturbance;

- 3) EPA agrees that within thirty days of completion of the Work or termination of the Agreement (subject to unforeseen extraordinary weather or other extraordinary conditions), EPA will make all reasonable efforts to achieve the following: (a) all equipment and property utilized by the EPA shall be removed from the Property, and (b) all utilities brought to the Property by EPA shall be disconnected and removed from the Property. Notwithstanding this provision, XTRA and EPA may mutually agree in writing to allow EPA to leave any gates installed on the Property by EPA after completion of the Work or termination of the Agreement;
- 4) EPA agrees that it will make all reasonable efforts to provide XTRA an updated written cost estimate regarding the planned remedial action at the OAZ Site at least ten (10) business days prior to Work commencing as described by the Agreement or as soon as practicable thereafter;
- 5) EPA agrees that nothing in the Agreement shall be construed as a release of claims, if any, or a waiver of any rights that XTRA or its employees, officers, agents and shareholders and affiliated companies and their respective employees, officers and agents, may have against the EPA or its contractors agents, subcontractors, employees, or invitees, or by anyone permitted to be on the Property by the EPA or its contractors (including the Illinois Environmental Protection Agency), and any subcontractors and their

respective officers and employees for claims, actions, damages, liability and expenses in connection with the loss of life, bodily and personal injury or damage to the property of XTRA or third parties, arising wholly or in part from any act or omission of the EPA or its contractors, agents, subcontractors, employees, or invitees, or by anyone permitted to be on the Property by the EPA or its contractors. Such claims, if any, shall be governed by the Federal Tort Claims Act 28 U.S.C. section 2671, et seq., and other statutes governing federal liability;

- 6) EPA agrees to require its contractor(s) performing Work on the Property to:
 - (a) carry insurance as required under federal procurement regulations; and, (b) comply with EPA's obligations under the terms of the Agreement;
- 7) EPA agrees that XTRA denies any and all legal and equitable liability and reserves all defenses under any federal, state, local or tribal statute, regulation or common law for any claim, endangerment, nuisance, response, removal, remedial or other costs or damages incurred or to be incurred by the United States, the State of Illinois or other entities or persons or any natural resource damages as a result of the release or threat of release of hazardous substances to, at, from or near the Property. Nothing in the Agreement shall be construed as an acknowledgement by XTRA that any release or threatened release of a hazardous substance constitutes an imminent and substantial endangerment to human health or the environment has occurred or exists on the Property. The Agreement shall not be

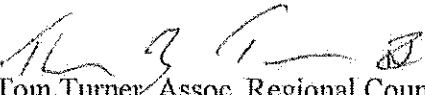
admissible in any judicial or administrative proceeding against XTRA, over its objection, as proof of a liability or an admission of any fact dealt with herein, but it shall be admissible in an action to enforce this Agreement; and,

- 8) EPA agrees that the costs of the Work are divisible from the other Site past response and on-going remedial costs. Further, EPA agrees that XTRA retains all of its rights and defenses under CERCLA. For purposes of this Agreement, "costs of the Work" shall mean all costs associated with bringing the soils covered by the Work onto the Property (the "Work Soils"), and any costs associated with further handling or management of the Work Soils through the conclusion of the Work. For purposes of this Agreement, costs of the Work shall not include any costs resulting from movement of the Work Soils unilaterally undertaken by XTRA without EPA's permission.

The above constitute EPA's agreement to the provisions of this letter, regarding the attached agreement on access at the OAZ Site.

Please feel free to contact me with any comments and questions by email or at 312/886-6613.

Sincerely,


Tom Turner, Assoc. Regional Counsel
EPA, ORC, Region 5

Attachment

cc: S. Desai, RPM (SR-6J)
Superfund Div., Region 5

K. Turner, OSC (SE-5J)
Superfund Div., Region 5

CONSENT FOR ACCESS TO PROPERTY,
STORAGE OF EQUIPMENT AND SOILS, AND RESPONSE ACTIONS

OLD AMERICAN ZINC PLANT ("OAZ") SUPERFUND SITE
VILLAGE of FAIRMONT CITY, IL (ST. CLAIR COUNTY)

Name: XTRA Intermodal, Inc. ("XTRA")
Property: 2575 Kingshighway
Fairmont City, Illinois
Parcel IDs: 02-04.0-402-028, 02-04.0-403-034, 02-04.0-404-077A2A0)-404-078, 02-04.0-
405-055, 02-04.0-406-031, 02-04.0-407-027, 02-04.0-408-002

XTRA hereby consents to officers, employees, contractors, and authorized representatives of the U.S. Environmental Protection Agency (herein collectively referred to as "EPA") and the Illinois Environmental Protection Agency ("Illinois EPA"), entering and having access to the above referenced XTRA property ("Property"), as identified in the accompanying Site map, for the following purposes and activities, and through the conclusion of the removal Work, as described in Paragraph 1 (below).

1. Placement, staging, and storage on the Property of at least approximately 20,000 cubic yards of soils collected from properties surrounding the Property contaminated with residues generated from the Zinc-smelting operations conducted at the Property. (The soils will be placed near the existing slag piles on the north end of the Property near the slag piles and the Capped 2003 RA Consolidation Area as noted in the attached figure and will be hydroseeded. Hereinafter, these activities shall be described as the "Work");
2. Solely in connection with performing the Work, EPA may also:
 - A. Transport and store necessary equipment (including vehicles) and supplies;
 - B. Place and use office/storage trailer(s) on the Property including connection of phone, fax, electric and computer services (EPA acknowledges there are no utilities provided at the Property, and EPA will need to directly coordinate the connection of any utilities it requires at the Property; EPA agrees it shall be solely responsible for any utilities or related services it brings to the site);
 - C. Provide site security;


- D. Install gates, if necessary, to facilitate the Work; and,
- E. Bring to, work with, and/or perform other necessary items or activities in support of the Work.
3. EPA's access rights under this Access Agreement shall terminate: (a) upon completion of the Work; or, (b) upon thirty days written notice from XTRA to EPA, that XTRA is terminating EPA's access rights; or (c) December 31, 2018;

These actions taken by EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., known as the Superfund law. These activities are necessary to implement the cleanup of the contamination in the soil.

In order to conduct the above Work items effectively, XTRA agrees to provide EPA with a key to access the gates at the above referenced XTRA Property. The key will be returned to XTRA once the activities are completed

This written permission is given by me voluntarily, on behalf of myself, with knowledge of my right to refuse and without threats or promises of any kind.

5-4-2018
Date


Signature of XTRA Intermodal, Inc.
Legal Representative

Vice President
Title